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ADMINISTRATIVE LAW SECTION of AMERICAN BAR ASSOCATION

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Nothing contained herein shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors.

CHAIRMAN'S PAGE

The Special ABA Committee on Legal Services and Procedure has completed its task. Its final report with recommendations and conclusions was released on February 1. The printed report, which comprises 87 pages, is too lengthy for reproduction in the Bulletin. But all recommendations and certain of the conclusions of the report are set forth in this issue.

The Midwinter meeting of the House of Delegates is scheduled to open at 10:00 A. M., Monday, February 20. The report of the Special Committee is the first item on the House calendar and as such will be the first matter presented for House action. Consequently, it would not appear to be in order for the Section to calendar for separate House action the resolutions adopted by the Council last October, which relate to the same subject-matter. The House, however, will have the benefit of the position of the Section on these matters before it takes action. Arrangements have been made for the Council, at its Midwinter meeting, which precedes the meeting of the House, to consider the recommendations of the Special Committee and to determine the extent to which it wishes to conform its position with that of the Special Committee. If this procedure is followed, the Section will be able to take an official position on the report and recommendations of the Special Committee when they are considered by the House.

There also appears in this issue a statement prepared by Robert M. Benjamin, describing the similarities and differences between the resolutions adopted by the Council at its meeting on October 29-30, 1955 and the resolutions adopted by the Special Committee. In a letter transmitting the statement of comparison on the two sets of resolutions, Mr. Benjamin makes this observation: "My use in the

memorandum of the phrases 'almost identical', 'substantially the same', etc., is intended, for the purpose of stating different degrees of likeness. This is not a case of what Fowler's 'Modern English Usage' deprecates as 'elegant variation'."

Arrangements have been made for all Council members and Chairmen and Vice-Chairmen of Section Committees to receive copies of the Special Committee's report. The Section Chairman also will have a limited supply available for distribution to Section members.

Any member of the Section who wishes to have his views on the report of the Special Committee brought to the attention of the Council is invited to submit them to Donald C. Beelar, Chairman of the National Committee, World Center Building, Washington 6, D. C., not later than February 15. Those received by that date will be included in his report to the Council and carefully considered by it.

Recommendation for the Establishment of a Congressional Committee on Administrative Procedures

There appears elsewhere in this issue a report of a Committee of three Council members recommending that the American Bar Association adopt a resolution expressing the belief that the Congress of the United States should have a standing committee on Administrative Procedure. The Committee of Council members was appointed by the Section Chairman pursuant to a resolution adopted by the Council at its meeting of October 29-30, 1955. The report and resolution of the Committee emphasizes that matters relating to administrative procedure are not within the specified jurisdiction of any existing Committee of Congress and asserts that the need for such a Committee is urgent and the time for obtaining it propitious.

The Report and recommendations of the Committee are being distributed to members of the Council for vote by mail ballot. If a majority of the Council favor the recommendations of the Committee, the Chairman will undertake to have the matter placed on the calendar for House action at the Midwinter meeting in Chicago, subject to the further understanding that it will be withdrawn from the House calendar should the Council decide by majority vote at its assembled Midwinter meeting in Chicago that further study or postponement is desirable. Any Section member who wishes to express his views to the Council on the subject matter of this report may do so through Donald C. Beelar, Chairman of the National Committee.

President Smythe Gambrell has appointed Hans Klagsbrunn Chairman of the Association's "Special Committee on Impact of Atomic Attack on Legal and Administrative Processes."

Members of the Section are welcome to attend the Midwinter meetings of the Council which will be held at the Edgewater Beach Hotel and are scheduled to begin at 10:00 A. M., Saturday, February 18 and

end at Noon, Sunday, February 19. The House sessions on the report of the Special Committee will be open to all ABA members.

RUFUS G. POOLE
Chairman

RECOMMENDATIONS BY THE SPECIAL COMMITTEE OF THE ABA ON LEGAL SERVICES AND PROCEDURE TO BE SUBMITTED TO THE 1956 MIDYEAR MEETING OF THE HOUSE OF DELEGATES

At its 1955 Spring meeting, the Board of Governors took cognizance of the fact that a number of sections and committees of the Association would be concerned with various aspects of the reports on legal services and procedure of the Hoover Commission and its Task Force, and of the report of the President's Conference. The Board decided to establish a Special Committee to serve as a coordinating and study committee with respect to the entire matter under question. Pursuant to that action, President Wright appointed a Special Committee with Ashley Sellers as chairman.

Unable to complete the task assigned to it by the 1955 annual meeting, the Committee submitted an interim report recommending its continuation and that, pending the submission of its final report, action be deferred by the House on any recommendations made to it by other committees and sections of the Association concerning this matter. This recommendation was approved and the Special Committee was directed to submit its final report to the 1956 Midwinter meeting of the House of Delegates.

The final report of the Special Committee was published on February 1, 1956. The report contains recommendations to the House which, if approved, would serve as guides for the drafting of legislative proposals. This was the procedure followed in connection with the enactment of the Administrative Procedure Act. The report also sets forth comments relating to each of the recommendations, certain additional conclusions which the Committee reached as to other matters upon which the Committee did not suggest present action, and tabulates the relation between the subject matters covered by the Committee's recommendations and the related recommendations of the Hoover Commission and its Task Force.

The following members of the Section of Administrative Law were members of the Special Committee: Ashley Sellers, Donald C. Beelar, Robert M. Benjamin, Richard S. Doyle, Rufus G. Poole, Gerard D. Reilly, Bernard G. Segal and Glenn R. Winters. Mr. Benjamin filed dissents from the Special Committee's resolutions 2.3(b) and 2.4(a), relating to evidence in formal adjudication and the scope of judicial review of agency determinations of fact; he reserved judgment on Special Committee resolution 4(b) to the extent that it recommends the transfer of adjudicatory functions of the NLRB to a specialized court. He took a similar position on the related resolutions of the Coun-

cil during its special meeting in Washington on October 29 and 30.

The resolutions of the Special Committee on which it recommends Association action are set forth in their entirety below:

Recommendations

The Special Committee recommends that the House of Delegates adopt the following Resolutions:

PREAMBLE AND RESOLUTION 1

WHEREAS, The American Bar Association, taking cognizance of the March 1955 report to the Congress by the Commission on Organization of the Executive Branch of the Government, commonly known as the Hoover Commission, on the subject of Legal Services and Procedure, of the report of its Task Force on that subject, and of the report of the President's Conference on Administrative Procedure, believes that approval and implementation of the following stated resolutions will bring about needed improvements in the Federal administrative process.

1. RESOLVED, That the American Bar Association is of the opinion that a comprehensive reexamination should be undertaken at this time of the Administrative Procedure Act of 1946 and related matters, including detailed consideration of and provision for more adequate public information on the procedures and operation of Federal agencies, improvements in the processes of agency rule-making, better assurance of fair and expeditious hearing and determination of agency cases, and improvements in judicial review of agency action; and to these and other ends advocates replacing the Administrative Procedure Act with a Code of Federal Administrative Procedure and undertaking the other reforms set forth in the following resolutions.

RESOLUTION 2

Code of Federal Administrative Procedure

2. RESOLVED, That the American Bar Association sponsors the enactment of a comprehensive code of Federal Administrative Procedure which will, among other features:

2.1 PUBLIC INFORMATION.—Provide more adequately and effectively for public information on the administrative process, including—

(a) Broadening the requirements concerning publication of rules, statements of policy, interpretations and instructions, but providing appropriate means for authorizing short form or alternative methods where desirable.

(b) Broadening the requirements concerning the publishing of orders and final opinions, or in the alternative making them available for public inspection.

(c) Requiring that no agency rule, statement of policy or interpretation of statute intended to have general application or effect and required by a statute or rule to be published shall, in any particular case, be a basis for a sanction or a ground of decision unless previously so published; provided that this shall not preclude the formulation of ad hoc policies or interpretations arrived at as a result of particular proceedings if clearly within and relevant to the issues thereof.

(d) Developing the Code of Federal Regulations in order that it may be made still more useful for public informational purposes.

2.2 Rule-Making.—Provide for improvements in the administrative rule-making process by—

(a) Enlarging the applicability of formal hearing procedures by extending such procedures to all rule-making which any statute hereafter enacted shall require to be made after a hearing unless such statute indicates an intention to prescribe merely a legislative type of hearing, and further providing for an examination to be made of previously-enacted statutes prescribing rule-making hearings to determine whether or not formal procedures should appropriately be required in rule-making thereunder.

(b) Broadening the coverage of provisions for notice and opportunity for public participation in rule-making where formal procedures are not required by eliminating in appropriate instances exceptions now included in Section 4 of the Administrative Procedure Act so far as it may be done without occasioning delay or expense disproportionate to the public interest.

(c) Making applicable to formal rule-making proceedings the principle of separation of functions now established by the courts and by Section 5(c) of the Administrative Procedure Act.

2.3 Hearings and Determinations.—Provide for improvements in the administrative hearing and decision processes by—

(a) Making applicable to agency members, in formal adjudication and formal rule-making, the principle of separation of functions now established by the courts and by Section 5(c) of the Administrative Procedure Act.

(b) Providing that in formal adjudication the rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the Federal courts.

(c) Providing that in formal adjudication and formal rule-making, where the agency has not presided at the hearing, the hearing officer who has presided shall make and file an initial decision.

(d) Providing that in formal adjudication the hearing officer's findings of evidentiary fact, as distinguished from ultimate conclusions of fact, shall not be set aside by the agency on review of the hearing officer's initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence.

2.4 Judicial Review.—Provide for more effective judicial review of agency proceedings by—

(a) Providing that the scope of judicial review of agency determinations of fact in formal proceedings be equivalent to the scope of review by the United States Courts of Appeals of determinations of fact by United States District Courts in civil non-jury cases.

(b) Providing that statutory interpretation in the course of agency adjudication be subject to full judicial review.

(c) Extending the scope of judicial review of the exercise of agency dis-

cretion by authorizing judicial review where agency action constitutes an abuse or clearly unwarranted exercise of discretion.

(d) Authorizing reviewing courts, subject to appropriate safeguards and upon a showing of irreparable damage, to enjoin at any stage of an agency proceeding agency action clearly in excess of constitutional or statutory authority.

(e) Providing for a prompt judicial remedy for every legal wrong resulting from agency action or inaction except where the Congress has expressly precluded judicial review.

RESOLUTION 3

Office of Administrative Procedure and Legal Services

3. RESOLVED, That the American Bar Association recommends the establishment within the executive branch of the Government, but independent of any department or agency thereof, of an Office of Administrative Procedure and Legal Services having major functions and divisions as follows:

(a) A Division of Administrative Procedure to coordinate at inter-agency level procedural rules and public information practices, to examine the state of agency hearing dockets, and to provide assistance and obtain information as to agency needs on these and related matters of administrative procedure.

(b) A Division of Hearing Commissioners to appoint, assign, and administer revised laws governing, Hearing Commissioners (now trial examiners).

(c) A Division of Legal Services to administer the laws governing a newly-established civilian legal career service and a simplified classification system for civilian attorney positions.

3.1 PRESIDENT'S CONFERENCE.—RESOLVED FURTHER, That the American Bar Association commends the work of the President's Conference on Administrative Procedure in its studies and reports on various aspects of administrative procedure and recommends that such Office of Administrative Procedure and Legal Services be utilized to coordinate implementation of the proposals of that Conference.

3.2 HEARING COMMISSIONERS.—RESOLVED FURTHER, That the American Bar Association believes that all agency hearing officers, other than agency members, should be designated "Hearing Commissioners" and that, to assure their competence and independence of judgment, statutory provision, as explicit as practicable, should be made for their tenure, status, compensation, assignment, and grounds for removal, and for "grandfather" rights for incumbent trial examiners.

3.3 LEGAL CAREER SERVICE.—RESOLVED FURTHER, That in the opinion of the American Bar Association a legal career service for all civilian attorneys, with certain specified exceptions, should be established in the executive branch of the Government; that performance of professional duties by attorneys in agencies should be in full recognition of their responsibilities as members of the legal profession; and that, absent a strong showing to the contrary with respect to particular positions, the legal staffs of each agency should be integrated under the professional supervision of a chief legal officer of such agency.

Resolution 4

Specialized Courts

4. Specialized Courts.—Resolved, That the American Bar Association recommends to the Congress the establishment, by amendment of Title 28 of the United States Code, of one or more courts of special jurisdiction within and as part of the judicial branch of the Government, such courts to have original jurisdiction on specified cases to ensure the tradition of independence in areas presently subject to administrative action equivalent to judicial action in courts of general jurisdiction, and their final orders and judgments to be subject to review by the Courts of Appeals; and that there be transferred to divisions of a single such court or to several such courts:

(a) Limited jurisdiction in the trade practice field with respect to certain powers now vested in the Federal Trade Commission and in certain other agencies.

(b) The jurisdiction now vested in the National Labor Relations Board over the adjudication of representation and unfair labor practice cases.

(c) Such other adjudicatory functions as the Congress may from time to time determine.

4.1 Tax Court.—Resolved Further, That the American Bar Association recommends to the Congress that the Tax Court of the United States be removed from the executive to the judicial branch of the Government as a court of original jurisdiction, and that this result be achieved by amendment of Title 28 of the United States Code.

Resolution 5

Representation

5. Resolved, That the American Bar Association recommends the enactment of more comprehensive and explicit legislation covering rights of persons or organizations to appear and be represented by others before Federal agencies, giving due regard to appropriate distinction between legal representation and nonlegal representation, such legislation to include the following features—

(a) That an attorney-at-law should be entitled to appear for and represent other persons, parties, or organizations, including the United States or any agency thereof, before any agency upon filing a statement with the agency that he is a member of the bar in good standing according to the law of any state, territory, commonwealth, or possession of the United States or of the District of Columbia, and that he is not disbarred or under suspension by any court; except that an agency may further require the filing of a power of attorney as a condition to the settlement of any controversy involving the payment of money.

(b) That a person who is not an attorney-at-law should be permitted to appear for and represent other persons, parties, or organizations, including the United States or any agency thereof, before any agency only where the agency finds that such representation is appropriate and desirable in the public interest, as well as in the interest of the parties to the agency proceedings, and is not otherwise precluded by law, and the agency provides therefor by general rule; provided that authorization to represent others

before an agency shall not authorize a person who is not an attorney-at-law to practice law.

(c) That, except where otherwise provided by statute, the representation of parties in formal hearings required to be determined on the record, which is subject to judicial review, should be by an attorney-at-law, provided that any party who is an individual may represent himself.

(d) That every person, party, or organization required or entitled to participate in any matter before an administrative agency should have a statutory right to appear by or with an attorney-at-law or, at his or its election, by or with another person qualified pursuant to 5(b) and 5(c) above.

(e) That minimum standards of conduct should be established by statute governing all persons permitted by any agency to represent private or public persons, parties, or organizations, including the United States and any agency thereof.

(f) That an attorney-at-law who has the privilege of representation before any Federal agency should be subject to disciplinary control by a Federal Grievance Committee through proceedings in the United States District Court of the judicial district in which he principally engages in the practice of law.

(g) That a person who is not an attorney-at-law, but who is, nevertheless, permitted to engage in representation before an agency, should be subject to reasonable disciplinary control by the agency.

RESOLUTION 6

Defense Department

6. RESOLVED, That, in order to accomplish desired improvements in the organization and legal services within the Department of Defense, the American Bar Association recommends:

(a) That, within the Department of Defense and its constituent military departments, professional responsibility over the entire legal staff, and for all legal services, should be vested in a General Counsel retaining the present rank of Assistant Secretary of Defense.

(b) That a career service for civilian legal personnel should be developed and supervised by a Civilian Legal Personnel Committee within the Department of Defense.

(c) That professional responsibility over the entire legal staff, and for all legal services, in the three military departments, subject to the professional supervision of the Department of Defense General Counsel, should be vested in the General Counsel of the Army, the Navy, and the Air Force, each to have the rank of Assistant Secretary.

(d) That the Army, the Navy, and the Air Force should each have a Judge Advocate General's Corps or Department under the direction of a Judge Advocate General with the rank of Lieutenant General or Vice Admiral.

RESOLUTION 7

Implementation

7. RESOLVED, That the Special Committee on Legal Services and Procedure be discharged; that the Board of Gover-

nors be authorized to delegate to an existing committee or committees, section or sections, of the Association, or to a new committee or committees to be established for the purpose, implementation of the foregoing resolutions, with authority to appear in behalf of the Association before committees of the Congress in support thereof, and with further authority to participate in the drafting of a Code of Federal Administrative Procedure and other appropriate legislation, taking into account in such activity the other views and conclusions stated in the report of the Special Committee on Legal Services and Procedure.

Among the conclusions reached by the Special Committee on which it did not recommend Association action, the following relate to matters of special interest to this Section:

A. Definition of Agency Authority. Authority delegated by the Congress to administrative agencies should be clearly and precisely stated in enabling legislation.

B. Application of Formal Adjudicatory Procedures. A code of Federal Administrative Procedure should make formal adjudicatory procedures applicable wherever an opportunity for agency hearing is required under the Constitution or by statute in the course of adjudication, whether or not there is an explicit statutory provision that adjudication be predicated on the record of such hearing.

C. Informal Adjudication. In many instances of adjudication not required to be conducted by formal adjudicatory procedures, more considered action is desirable than presently exists; but the prescription of procedures to be generally applicable to all instances of informal adjudication is impracticable.

D. License Suspension or Revocation. A Code of Federal Administrative Procedure, in dealing with license suspension and revocation, should provide some intermediate procedure between the full procedure normally to be followed in such cases, on the one hand, and summary license suspension where the circumstances warrant, on the other hand.

E. Inter-agency Disputes. More effective means should be provided for minimizing disputes between agencies and for resolving such disputes.

G. Transfer of Judicial Functions of Administrative Agencies to the Courts. The Congress should consider the feasibility of transferring to the courts certain judicial functions of administrative agencies, such as the imposition of money penalties, the remission or compromise of money penalties, the award of reparations or damages, and the issuance of injunctive orders, whenever it may be done without harm to the regulatory process.

COMPARISON OF RESOLUTIONS ADOPTED BY COUNCIL WITH THOSE ADOPTED BY SPECIAL COMMITTEE

Following is a statement of the extent to which the resolutions proposed in the report of the Association's Special Committee on Legal Services and Procedure resemble or differ from the resolutions adopted by the Council of the Section of Administrative Law at its meeting on October 29-30, 1955, as set forth in the December 1955 issue of the Administrative Law Bulletin (8 Ad. L. Bul. 2-4). Apart from likenesses and differences in particular resolutions pointed out below, reference to the two sets of resolutions will disclose a considerable difference in the grouping of particular resolutions in categories.

Reexamination of Administrative Procedure Act

Council Resolution 1

Special Committee Preamble and Resolution 1 and the introductory paragraph of Resolution 2 are substantially in accord with the introductory paragraph and paragraphs (1) and (2) of Council Resolution 1, in so far as reexamination of the Administrative Procedure Act and preparation of a comprehensive Code are concerned. The Special Committee Preamble and Resolution 1 deal, however, with other matters as well.

Special Committee Resolution 7 is to the same general effect as paragraph (3) of Council Resolution 1, but differs in some respects.

Public Information

Council Resolution 2

Paragraph (a) of Special Committee Resolution 2.1 is identical with paragraph (a) of Council Resolution 2.

Paragraph (b) of Special Committee Resolution 2.1 is almost identical with paragraph (b) of Council Resolution 2.

Paragraph (c) of Special Committee Resolution 2.1 deals specifically with related matter not so dealt with in the Council resolutions.

Paragraph (d) of Special Committee Resolution 2.1 is substantially the same as paragraph (c) of Council Resolution 2, but calls for making the Code of Federal Regulations "still more useful" instead of "much more useful."

Rule-Making

Council Resolutions 3, 4(a) and 4(d)

Paragraph (b) of Special Committee Resolution 2.2 is almost identical with paragraph (a) of Council Resolution 3.

There are no Special Committee resolutions dealing with the subject-matter of paragraphs (b) and (c) of Council Resolution 3.

Paragraph (c) of Special Committee Resolution 2.2 is substantially the same as paragraph (a) of Council Resolution 4.

Paragraph (a) of Special Committee Resolution 2.2 is identical in intent with paragraph (d) of Council Resolution 4,

but contains various changes in language thought by the Special Committee to be clarifying.

Hearings and Determinations

Council Resolutions 4(b), 5(b), 5(c), 5(d) and 6(a)

Paragraph (a) of Special Committee Resolution 2.3 is substantially the same as paragraph (b) of Council Resolution 4.

There is no Special Committee resolution dealing specifically with the subject-matter of paragraph (b) of Council Resolution 5.

Paragraph (c) of Special Committee Resolution 2.3 is substantially the same as paragraph (c) of Council Resolution 5.

Paragraph (d) of Special Committee Resolution 2.3, dealing with agency review of hearing officers' decisions, differs from paragraph (d) of Council Resolution 5. The Council resolution would apply to formal rule-making as well as formal adjudication, and would provide that the scope of review by the agency, except for questions of policy and agency discretion committed to the determination of the agency by the Congress, should be the same as that of a court on judicial review of agency decisions. The Council resolution thus follows Section 206(c) of the Administrative Code proposed by the Task Force, adding to the Task Force exception for "questions of policy" a further exception for "questions of * * * agency discretion." The Special Committee resolution would apply only to formal adjudication, would limit agency review with respect only to a hearing officer's findings of evidentiary fact, and would permit the agency to set aside such findings of fact if contrary to the weight of the evidence.

Paragraph (b) of Special Committee Resolution 2.3 is almost identical with paragraph (a) of Council Resolution 6.

Administrative Court

Council Resolution 4(c)

Special Committee Resolution 4 accords with paragraph (c) of Council Resolution 4 in leaving open the question whether there should be a single specialized court, with divisions, or several such courts, and in proposing that any such court should be a court of original jurisdiction. The two resolutions are alike, also, in their definition of the kind of agency adjudicatory action that might be transferred to such a court or courts, though the Special Committee resolution states the definition in somewhat different language. The Special Committee resolution differs from the Council resolution in providing that such a court or courts should be in the judicial branch of the Government.

Both resolutions propose (in somewhat different language) the transfer to such a court of trade practice matters.

The Special Committee resolution, unlike the Council resolution, proposes the transfer to such a court of representation cases now adjudicated by the National Labor Relations Board, as well as the unfair labor practice cases mentioned in the Council resolution.

Special Committee Resolution 4.1, with respect to the Tax Court of the United States, proposes simply that that Court be removed from the executive to the judicial branch of the Government (leaving open the question whether it should necessarily be a separate court or might be a part of some larger court).

Hearing Commissioners

Council Resolution 5(a)

Special Committee Resolutions 3 and 3.2 are generally consistent with paragraph (a) of Council Resolution 5 but, whereas the Council resolution leaves open alternatives, the Special Committee resolutions are explicit in advocating that the appointment and assignment of Hearing Commissioners, and the administration of revised laws governing them, be vested in the independent Office of Administrative Procedure and Legal Services recommended by the Special Committee.

The alternative (considered in the Council resolution) of assigning Hearing Commissioner matters to a Chief Hearing Commissioner attached to an administrative court is rejected by the Special Committee, in comment on its resolutions, on the major ground (apart from the fact that the Special Committee does not presently recommend establishment of a comprehensive administrative court) that it would be inappropriate to attach such functions to a judicial body.

Judicial Review

Council Resolutions 6(b) and 7

Paragraph (a) of Special Committee Resolution 2.4 is substantially the same as paragraph (b) of Council Resolution 6.

Paragraph (c) of Special Committee Resolution 2.4 deals explicitly with one of the matters within the purview of Council Resolution 7 (which is stated in general terms).

There are no Council resolutions dealing with the subject-matter of paragraphs (b), (d) and (e) of Special Committee Resolution 2.4.

Representation

Council Resolution 8

Special Committee Resolution 5 deals with the subject-matter of Council Resolution 8. The Special Committee resolution is consistent with the Council resolution, but goes into much greater detail.

REPORT OF SPECIAL COUNCIL COMMITTEE ON THE ESTABLISHMENT OF A CONGRESSIONAL COMMITTEE ON ADMINISTRATIVE PROCEDURE

At its meeting on October 29, 1955, the Council adopted a resolution establishing a special committee of the Council to consider the creation of a Congressional committee for administrative procedure matters. It did so in the following terms:

> "Resolved, That the Chairman be authorized to appoint a special com-

mittee of the Council, such committee to be directed to report back to the full Council following its consideration of the recommendation that there should be a Joint Committee of the Congress made up of representatives of the judiciary committees and the committees on Government operations, whose purpose it would be to consider administrative procedure matters."

Pursuant to this resolution, the Chairman appointed a committee of three Council members: Donald C. Beelar, Frank C. Newman, and Hans A. Klagsbrunn, Chairman.

The Council committee has considered the questions posed and has consulted with the Chairman of the Section. It believes that the need is urgent and the present time, with early Congressional consideration of the Hoover Commission Report on Legal Services and Procedure, is a propitious one for proposing an appropriate committee of Congress to be the focal point for questions involving administrative procedure. Accordingly, the Council committee has prepared and recommends for approval by the Council, and, if so approved, presentation to the House of Delegates for approval at its midwinter meeting, the attached resolution, together with comments in support of the resolution.

The Council committee has sought to incorporate a measure of flexibility in the resolution in order not to foreclose ready ABA acceptance of such forms of committee organization and details of functions as might be most acceptable to the Congress, and did not conflict with the principles endorsed by the resolution. Thus, for example, the resolution does not specify a joint committee of Congress, nor does it attempt to give an exclusive listing of the functions of the proposed committee.

Recommendation

RESOLUTION, CONCERNING THE ESTABLISHMENT OF A CONGRESSIONAL COMMITTEE ON ADMINISTRATIVE PROCEDURES

The Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

RESOLVED, that the American Bar Association believes that there should be established within the Congress of the United States a standing Committee on Administrative Procedure, duly authorized and directed, among other responsibilities,

(a) To screen and study complaints concerning the procedures of the administrative agencies in order to help insure fair play and due process.

(b) To exercise continuous watchfulness over the Administrative Procedure Act and laws of like character, and to examine, appraise, and report on proposed legislation which would, directly or indirectly, affect such Act and laws or the principles they embody, including any proposed departures or exemptions therefrom.

(c) To determine whether the administrative agencies are complying with the requirements of the Administrative Procedure Act and laws of like character, and with the principles they embody, to the end that public

and private rights may receive proper protection in accordance with constitutional requirements and Congressional policies.

FURTHER RESOLVED, that the Section of Administrative Law is authorized and directed to represent the Association in furtherance of the above-stated views.

STATEMENT OF REASONS FOR RECOMMENDATION

The functions of a Committee on Administrative Procedure are not within the specified functions of any existing Committee of Congress but are of interest to most Congressional Committees and to all but a few of the departments and agencies of the Executive Branch. Administrative procedure is the adjective side of public law. It is a field which vitally concerns public and private rights throughout the country at large. The above proposal would greatly facilitate the formulation of Congressional policy in this area and make effective desired review by Congress of the exercise of delegated authority. The functions of a Committee on Administrative Procedure should include the following:

1. Consideration of all proposals relating to the Administrative Procedure Act and laws of like character, including proposed departures or exemptions therefrom; and review of agency compliance with the requirements thereof.

2. Review of agency rules of practice and procedure, and consideration of means for ensuring fairness and minimizing delays and expense in agency proceedings.

3. Review of recommendations of agencies and interested persons regarding administrative procedure.

4. Preparation of recommendations to the Congress on any of the foregoing or related matters.

HANS A. KLAGSBRUNN,
Chairman

DONALD C. BEELAR
FRANK C. NEWMAN